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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Es.C. et al., Persons Coming Under
the Juvenile Court Law.

B209464
(Los Angeles County
Super. Ct. No. CK60355)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Appellant,

v.

C.C. et al.,

Defendants and Respondents.

APPEAL from an order of the Superior Court of Los Angeles County, Terry T. Truong, Juvenile Court Referee. Reversed in part; affirmed in part; remanded.

Raymond G. Fortner, Jr., Los Angeles County Counsel, James M. Owens, Assistant County Counsel, O. Raquel Ramirez for Plaintiff and Appellant.

Merrill Lee Toole for Defendants and Respondents C.C. and R.Y.

Eva E. Chick, under appointment by the Court of Appeal, for minors Ad.C. and Al.C. Joseph D. Mackenzie, under appointment by the Court of Appeal, for minor Es.C.

Jennifer Mack, under appointment by the Court of Appeal, for minor I.C.
Aida Aslanian, under appointment by the Court Of Appeal, for minor El.C.

I. INTRODUCTION

The Los Angeles County Department of Children and Family Services (the department), J.H. and F.H., de facto parents, appeal from a juvenile court's orders and findings of July 21, 2008, granting the Welfare and Institutions Code¹ section 388 modification petitions filed by the five children's attorney. The department argues the juvenile court abused its discretion by: giving the relatives preferential consideration for placement; ordering the removal of the children from their de facto prospective adoptive parents and placement with paternal relatives; and, determining that placement with the paternal relatives would be in all of the children's best interest. Appointed appellate counsel for the youngest child, I.C., who is two years, five months, joins in the department's position. We reverse the order granting the modification petition only as to I.C.

II. BACKGROUND

This case involves the six children of R.Y. (the mother) and C.C. (the father): J.C. (born December 1992); Es.C. (born August 1997), Ad.C. (born October 1998), Al.C. (born October 1999), El.C. (born July 2004), and I.C. (born May 2006). The eldest child, J.C., is not a party to this appeal. On August 26, 2005, the department filed a section 300 petition on behalf of all the children except I.C. who was not yet born. As sustained at

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the September 23, 2005 hearing, the petition contained the following allegations: the mother physically abused Es.C. by striking him in the face with her fist; the father knew about the altercation between the mother and Es.C.; the father failed to take action to protect the children upon discovering the physical abuse to Es.C.; such abuse endangered Es.C.'s physical and emotional health and safety and created a detrimental home environment; the abuse placed all the children at risk of physical and emotional harm, damage, danger, and physical abuse; the children were exposed to violent physical confrontations between the mother and father; and exposure to the confrontations endangered the youngsters' physical and emotional health and safety, created a detrimental home environment, and placed the children at risk of physical and emotional harm, damage, and danger. The five children were detained and placed together with a foster parent, A.N. All of the children were represented by a single attorney, Abby Eskin.

The August 26, 2005 detention report stated that the department received a report the father punched the mother in the nose in the children's presence. The father admitted hitting the mother, but said he did not consider it to be domestic violence because he did not hit her hard enough. The father accused the mother of having sex with other men and not taking care of the children. (As noted, I.C. was not yet born.) The mother said she had not been involved in prostitution since she was 20 years old. The father said the mother did not take good care of the children, cook, or clean the house. While investigating the allegations, Susana Torres, the social worker, learned from the father that the mother had hit Es.C., her then 8-year-old son, in the face with a closed fist two weeks earlier. The mother admitted that she lost control and hit Es.C. with her closed fist. The mother thought Es.C. had dropped El.C., his then four-year-old sister, from the bed. Es.C. told Ms. Torres that the mother had punched him on the cheek. Then 12-year-old J.C. arrived home during the interview. J.C. had remained at a friend's home until almost 10 p.m. J.C. did so because he did not want to listen to his parents argue and fight. J.C. said the father constantly insulted the mother and called her bad words in front

of the children. The mother and the father screamed at one another. J.C. said he knew his the mother needed help because she cried a lot and always felt sad. The mother admitted that when he was only 18 months of age J.C. had been removed from her custody in 1994, when they resided in Las Vegas, Nevada. The mother stated, “I lost control and got [J.C.] and took him in the middle of the street and began to kick him and throw him to the ground.” The mother stated she was very depressed. The mother indicated she knew she needed help and wanted to get help but sometimes became very sad and could not control herself. The Nevada child protective services case was opened in August 1994 and closed in October 1998. When interviewed for the “Jurisdiction/Disposition Report” in this matter, the mother admitted that she had been a prostitute up until earlier in 2005 to supplement the household income because the father was unemployed.

At the September 23, 2005, hearing, the parents pled no contest to the allegations in the petition. The juvenile court ordered: family reunification services; parenting and individual counseling to address domestic violence and anger management issues; and monitored visitation. The juvenile court noted that a Desarrollo Integral de la Familia evaluation regarding potential placement of all of the children with the paternal grandparents in Mexico was pending. On November 18, 2005, the juvenile court ordered that the matter be continued three weeks to accommodate the preparation of the Desarrollo Integral de la Familia report. However, at the December 12, 2005 progress hearing, the report was not yet available. Ms. Eskin, who represented all five children, reported that J.C. and Es.C. indicated that they did not want to go to Mexico. Moreover, Ms. Eskin did not believe it was in their best interests to be placed in Mexico. The juvenile court ordered the evaluation for placement with paternal grandparents continue. At the January 13, 2006, progress hearing, the mother’s counsel, Emma Castro, reported that the report was still pending. However, Ms. Castro further noted that neither the parents nor the children desired relocation to Mexico on a permanent basis. On December 22, 2005, the department social worker, Lorena Guzman, verified that the

paternal grandparents could not provide a suitable home for the five children, as the residence was too small. On February 16, 2006, J.C., who was then 12 years of age, was removed from the foster placement with A.N. because of his defiant and disruptive behavior and placed in a group home.

I.C. was detained in May 2006 shortly after her birth. When detained, I.C. was placed in the licensed foster home of F.H. and J.H. On May 30, 2006, a section 300 petition was filed by the department. Ms. Eskin represented I.C. The petition realleged the physical abuse allegations of the prior section 300 petition involving the four siblings of I.C. In addition, the May 30, 2006 petition alleged that siblings of I.C., J.C., Es.C., Ad.C., Al.C., and El.C., had been declared dependents based on the same physical abuse allegations. On June 6, 2006, a pre-release investigation hearing was conducted. A department report stated it was in the best interest of I.C. to be placed in foster care. At the June 22, 2006 disposition hearing, the parents submitted on the petition and, the juvenile court sustained the petition pursuant to section 300, subdivision (b) as to I.C. finding substantial danger exists to her physical and emotional health and safety. The juvenile court ordered family reunification services be provided. The mother was ordered to: complete domestic violence counseling; participate in individual counseling to address domestic violence, parenting, and relationship issues; and comply with psychiatric treatment and take all prescribed medication. The father was ordered to complete domestic violence counseling and participate in individual counseling to address relationship issues. The juvenile court further ordered weekly monitored visits by the parents and siblings with I.C. At the August 16, 2006 progress hearing, the juvenile court ordered that all treating therapists be provided with the Evidence Code section 730 report prepared by Dr. Timothy D. Collister.

The section 366.26 permanency planning hearing was scheduled for September 22, 2006. A progress hearing was scheduled for I.C. on the same date. In light of the department's recommendation that parental rights be terminated, the parents requested that a contested hearing be held on the parental termination rights issue. The department

filed a status review and progress report for the two scheduled hearings. The September 22, 2006 department report revealed: the oldest child, J.C., was in a group home where he had been placed on February 16, 2006 ; Es.C., Ad.C., Al.C., and El.C. were in the home of A.N. where they had been placed at least since August 25, 2005; and I.C., who was now approximately five months old, remained in the home of F.H. and J.H. since being placed there on May 24, 2006. The social worker's status report revealed that although the parents had enrolled in domestic violence and parenting classes, they had not completed all of them. In addition, the parents only enrolled in individual counseling when informed that reunification could be terminated. Also, at an unsupervised visit with Es.C., Ad.C., Al.C., and El.C. on September 17, 2006, the parents brought their "compadres" who had recently been released from prison. The parents got into a loud argument. According to the mother, the father called her names like, "prostitute, whore and puta" and spit in her face. The mother reported that the father also pushed her and called her names. The "compadres" were staying at parents' residence until they could save money for their own place. The father told the social worker that mother had begun prostituting again and came home at 1:30 or 2 a.m. Es.C., Ad.C., Al.C., and El.C. returned to their foster home crying and emotionally distressed. Es.C. told the foster mother, "I don't want to go with my mom and dad, promise me I am not gonna to [sic] back with mom and dad." The social worker reported that the children continued to make positive adjustments to their foster placement and academically. J.C., who was still residing in the group home, continued to exhibit negative behavior and defiance.

The contested section 366.22 hearing on November 6, 2006, was held as to all six children. The juvenile court found by a preponderance of the evidence: the return of the children to the physical custody of the parents would create a substantial risk of detriment to the youngster's physical and emotional health and safety; there was a continuing necessity for current placement; the parents had partially complied with the case plan, but had not adequately addressed the issues that led to the dispositional orders; and reasonable effort had been made to return the children to the parents. The juvenile court

ordered that the children remain dependents of the court under section 300. The juvenile court terminated family reunification services and ordered that the suitable placement order remain in full force and effect.

On February 27, 2007, Es.C., Ad.C., Al.C., and El.C, were moved to the foster home of the F.H. and J.H., where I.C. had been placed since birth. A.N., the foster parent of Es.C., Ad.C., Al.C., and El.C. since at least since August 25, 2005 was unwilling to adopt them. Additionally the relatives of A.N. were unwilling to adopt Es.C., Ad.C., Al.C., and El.C. F.H. and J.H. had come to know Es.C., Ad.C., Al.C., and El.C. during visits with I.C. F.H. and J.H. were interested in adopting all five children. As can be noted, the oldest child, J.C., who remained in a group home, was not among the children who moved into the home of F.H. and J.H. In the March 5, 2007 section 366.26 report, Social Worker Trainee Maria Sosa noted: “[I.C.] has become very closely bonded with Mr. and Mrs. H. and their entire family. [I.C.] displays behaviors indicative of a healthy attachment.”

At the scheduled March 5, 2007 section 366.26 hearing, the father was not present. But the father’s sister, M.L. was present. After the parents reiterated their desire for a contested permanency planning hearing, the father’s counsel, Lynda Attenborough, asked that his sister, M.L., be evaluated for placement. Ms. Attenborough explained, “She didn’t come forward before because she believed the parents would be able to get the children back.” The juvenile court noted that M.L. could be evaluated but an assessment pursuant to the Interstate Compact on the Placement of Children would be necessary since she lived in Nevada. (Fam. Code , § 7901.) However, no such assessment was ordered on March 5, 2007. However, the department was ordered to evaluate M.L. as a possible placement.

M.L., the paternal aunt, was interviewed by social worker Nathan Singer. M.L. said she visited the children, except I.C., every six months. M.L. learned that the former foster mother, A.N., declined to adopt Es.C., Ad.C., Al.C., and El.C. Thereupon, M.L. and her husband, A.L., agreed that they would like to adopt them. M.L. explained that

the prior visits were sporadic because the mother had claimed that everything was “fine” and the children would be returned to the parents. The April 24, 2007 report by Ms. Sosa also described the relationship of I.C. with F.H. and J.H., “[I.C.] appears to be very close to the Prospective Adoptive Parents, she refers to them as ‘mama and dada.’” I.C. was described by Ms. Sosa as well adjusted to her home and prospective adoptive parents. F.H. and J.H. wanted to adopt all of the children except J.C. who remained in the group home.

On April 26, 2007, the juvenile court conducted a continued section 336.26 hearing. M.L. and A.L. were present. Ms. Eskin, who represented all of the children, reported that Es.C. and Ad.C. did not want to stay with the prospective adoptive parents, F.H. and J.H. Rather, Es.C. and Ad.C. preferred to live with the paternal aunt and uncle, M.L. and A.L. in Nevada. The juvenile court declined to order an interstate assessment because the two children would not be able to see their siblings that often but approved monitored visits for M.L., the paternal aunt, with “the children”; although the oral order did not limit the proposed visitation to youngsters with whom she had previously visited. The juvenile court further ordered that the former foster parent, A.N., be allowed two monitored visits with the children. Neither M.L. nor A.N. were to discuss the facts of the case or possible placements with the children or in their presence.

On May 7, 2007, M.L. and A.L. filed a request to change order. In that request, M.L. and A.L. requested the juvenile court allow the children, except for J.C., to remain with F.H. and J.H. for three months. If after three months the children were unhappy, M.L. and A.L. requested placement of the five youngest children, including I.C., in their home. The juvenile court denied the request finding it was not in the best interests of the children to change the existing order. When interviewed by the social worker at their school, Es.C., Ad.C., and Al.C. indicated that they wanted to live with M.L. in Nevada. The three children had never been to M. L.’s home. The children stated M.L. told them she wants them to go live with her in Las Vegas. The children said they wanted to live with M.L. because, “[S]he has a pool” and, “[W]e can play and eat there.”

On May 7, 2007, a review hearing for all six children was held. The juvenile court indicated that it had considered all permanency planning options for J.C. and found he was not a proper subject for adoption and no one was willing to accept legal guardianship. Permanent placement with a foster parent with a goal of emancipation was ordered as the permanent plan for J.C. At the request of Ms. Eskin, who continued to represent all of the children, the juvenile court ordered an interstate assessment for placement of the other children with M.L. and A.L. in Nevada. M.L. and A.L. were present at the hearing.

A section 366.26 hearing was held on July 16, 2007. Ms. Eskin, who represented all of the children, requested that the permanent plan hearing be continued because: four of the five children had only been living with F.H. and J.H. for a few months; some mental health goals had not been met by the children; and the Nevada placement was still being assessed. The juvenile court ordered that there be no discussion with the children regarding placement. The juvenile court also found that the permanent placement of J.C. with a foster parent with the specific goal of legal guardianship for independent living was appropriate.

On October 2, 2007, the Clark County Department of Family Services concluded it would not be in the best interests of the five youngest children if they were placed in Las Vegas with M.L. and A.L. The reasons for the finding concerning the children's best interests were: M.L. and A.L. had never parented children with special needs; Es.C., Ad.C., and Al.C. all were special needs children; M.L. and A.L. were in denial about the special needs of Es.C., Ad.C., and Al.C.; the child care plans and sleeping arrangements were of concern; there was a lack of availability due to the involvement of M.L. and A.L. in their church; M.L. and A.L. do not believe in psychotropic medications; and M.L. and A.L. intend to address the children's special needs from a "scriptural/religious" perspective. The assessing social worker stated, "[T]his worker has strong reservations about their [] ability to follow through and accept and act on suggestions due to their personal beliefs [Es., Ad. and Al.] clearly have special needs that will need to be closely

monitored and ongoing professional intervention will be required.” M.L. and A.L. minimized the children’s behavior by stating they believed the current foster parents are exaggerating so they will receive a special foster care rate. It was noted that A.L. failed to reveal any law enforcement history on his application or during the interview. However, a local police check revealed findings for A.L. The social worker foresaw problems with the ability of M.L. and A.L. to appropriately manage the children’s behaviors and meet their counseling needs. At the November 5, 2007 progress hearing, the juvenile court found continued jurisdiction and placement necessary and appropriate. The juvenile court ordered the permanent plan of adoption should continue. The status review report prepared for the hearing noted that the home study for F.H. and J.H. was approved and they had agreed to adopt all five children. Social Worker Kathia Flores noted: “[Es.C., Ad.C., and Al.C.] have expressed they like their current placement and refer to foster parents as “mom and dad”. They have also expressed they want to live there, but that they also wouldn’t mind living with their paternal aunt, [M.L.] in Las Vegas.” Ms. Flores also noted: “The minors have improved in their behavior, eating habits, school grades and in their personal appearance. The minors also seem well bonded with their foster parents. [I.C.] has been with the foster parents since she was 5 days old, thus has known her foster parents all her life and has a good attachment to them.”

At the section 366.26 hearing on January 14, 2008, it was noted that the Nevada authorities had reconsidered their decision regarding the placement of the children with M.L. and A.L. under the Interstate Compact on the Placement of Children. The Clark County Department of Family Services requested that the California authorities resubmit the interstate referral for approval. The department objected to this reconsideration based upon sufficient facts regarding the inappropriateness of the placement in the Nevada social worker’s initial assessment. Moreover, the department argued that I.C. had been with F.H. and J.H. since birth and the other four children had been placed with them since March 2007. Actually, the four remaining children had been placed with F.H. and

J.H. on February 27, 2007. In his informational report for the juvenile court, Nathan Singer, the children adoptions social worker noted, "The children continue to thrive in their current placement, and the caregivers remain fully committed to adopting them." At the January 14, 2008 hearing, the department argued that at the July 16, 2007 section 366.26 hearing, the matter was continued because the children had only been with F.H. and J.H. a few months. The department objected to further continuance noting that the adoption by F.H. and J.H. and termination of parental rights was the appropriate plan. Ms. Eskin, who represented all of the children, and the parents argued that the placement with M.L. and A.L. in Nevada should be pursued. The juvenile court ordered that counsel be appointed for F.H. and J.H. and that the interstate request be resubmitted to Nevada. The Interstate Compact for the Placement of Children request was submitted for reconsideration on January 24, 2008. On February 7, 2008, the Nevada social worker indicated she was completing her home study. On February 13, 2008, Nevada authorities indicated they were awaiting: a "waiver" for A.L., the paternal uncle; a background check for the sister of M.L. who would provide babysitting; and construction of a fence around the pool.

On February 15, 2008, the juvenile court granted unmonitored visits with the children for M.L. in Southern California over the objections of the department. The visits of A.L. were to be monitored by M.L. The juvenile court granted de facto parent status to F.H. and J.H.. The children had an unmonitored visit with M.L. on March 1, 2008. Upon returning, the children informed F.H. that they had seen their parents and former foster parent, A.N. M.L. telephoned the social worker on March 4, 2008 to explain that she drove the children to Los Angeles. While in the children's old neighborhood, they saw the parents walking along the street. M.L. explained she allowed the parents to speak with the children. M.L. claimed the encounter was coincidental and unplanned. M.L. had contact with A.N. M.L. said she and the children were in Los Angeles and made arrangements for a meeting. When the social worker, Karina Reyes, interviewed the children on March 6, 2008, A.I.C. reported that they saw their parents walking down

the street near their old house. Al.C. further reported that they saw A.N. at a pizza parlor. Ad.C. told Ms. Reyes that his parents came out of nowhere when they were driving in their old neighborhood. Ad.C. told Ms. Reyes how their old house had changed as the furniture was re-arranged. However, he corrected himself to say that his parents told him how it was different. Ad.C. also acknowledged the presence of A.N. at the pizza restaurant. Es.C. said that while they were parked near their old house, their parents were walking down the street. While at the pizza parlor, Es.C. saw A.N. but did not really speak to her. On March 12, 2008, a departmental group discussion resulted in a decision to change the visitation status of M.L. to “monitored” based on what had occurred. However, at a non-appearance hearing on March 21, 2008, the juvenile court ordered the visitation with M.L. remain unmonitored.

The Nevada home study was signed on April 2, 2008, approving placement with M.L. and A.L. The home was approved for six months, expiring on October 7, 2008, if not used or cancelled. The Clark County social worker noted: “1) You will need court permission to place; 2) the foster home study remains pending in NV. . . . [and] IV E payment on the basis of this approved relative home, [and] will not be able to do so until we receive the approved foster 100a’s [and] foster license” The department’s interim review report dated April 7, 2008, expressed concerns that the Nevada authorities stated a local police check revealed findings regarding A.L. but did not state what criminal conduct was involved. The report also stated that A.L. did not pass the federal background check. No further explanation was given. However, a “waiver” was obtained by Clark County. The department also noted: “In regards to the specialized parenting [the report] states ‘the only issue of concern noted in this section is that they [M.L. and A.L.] do not seem to have realistic expectations about caring for the [] children. They seem, to believe that once they are placed with them that a lot of there[sic] special needs will be alleviated.’” The department noted that M.L. and A.L. had only six visits with the children in two years and only recently showed an interest in caring for them. The department continued to recommend adoption by F.H. and J.H. be

identified as the permanent plan for the five younger children based upon their provision of a stable environment for five youngsters. Also, the department based its recommendation on the ability of F.H. and J.H. to meet the children's special needs. F.H. and J.H. were willing to maintain contact with the parents after the adoption is finalized. Moreover, I.C. had been in the care of F.H. and J.H. within several days of birth. Further, Social Worker Karina Reyes noted that I.C. was extremely attached to the H's as the only caretakers she has known. The department believed the removal of I.C. from F.H. and J.H. could cause emotional attachment issues.

At the May 5, 2008, permanent review hearing, the juvenile court found as to the five youngest children, "The permanent plan of adoption is appropriate and is ordered to continue as the permanent plan." The juvenile court also granted Ms. Eskin's request for overnight weekend visits with M.L. and A.L. at their Nevada home. The juvenile court also ordered an Evidence Code section 730 evaluation by Dr. Nancy Kaser-Boyd for all of the children, including J.C. The evaluation was ordered to assess the sibling relationship among all of the children. In its May 9, 2008, written order the juvenile court noted particular concern regarding the relationship between I.C. and the other children. The order stated: "The court is considering two options for a permanent plan for these siblings. One plan is placing minors 2-5 (and minor 1 in the future) with their paternal aunt and uncle [M.L. and A.L.] with a plan of adoption and leaving I.C. (minor 6) as currently placed with [F.H. and J.H.] with a plan of adoption. The other plan is placing minors 2-6 with their aunt and uncle in Las Vegas. The court would like an analysis of the attachment between [I.C.] and her siblings and between Irene and [F.H. and J.H.], including the emotional harm caused to I.C. if she were to be removed from her siblings compared to the harm caused to I.C. if she is removed from [F.H. and J.H.]. [¶] Considerations of each plan include that: supervised visitation with birth parents will be maintained if children are placed with aunt and uncle. [I.C.] has been placed with [F.H. and J.H.] since birth." On June 3, 2008, the juvenile court granted the request of F.H. and J.H. for prospective adoptive parents status.

On June 11, 2008, Ms. Eskin, who represented all of the children, filed a section 388 petition regarding Es.C., Ad.C., Al.C., and El.C. Ms. Eskin's modification petition sought to remove these four children from the placement with F.H. and J.H. and place them with M.L. and A.L. in Las Vegas. Ms. Eskin argued the juvenile court should modify the existing order based upon their preference and to promote the safe and appropriate contact between the four youngest children and J.C. as well as the parents. On June 25, 2008, Ms. Eskin filed a similar petition on behalf of I.C.

On June 24, 2008, nearly three years after the initial section 300 petition was filed, the juvenile court heard testimony regarding the section 388 petition filed by Ms. Eskin regarding Es.C., Ad.C., Al.C., and El.C. The testimony continued to June 25, 2008, at which time the juvenile court noted that a section 388 petition had also been filed on behalf of I.C. The parties waived notice on that petition. The juvenile court ordered that the second petition would be part of the written closing arguments as well as the decision to be made on July 14, 2008.

On July 21, 2008, the juvenile court granted the section 388 petition as to Es.C., Ad.C., Al.C., and, El.C., noting that the changed circumstance justifying that modification was Nevada's approval for placement with M.L. and A.L. The juvenile court further found: "[I]t would be in those four children's best interest to reside with the paternal aunt and uncle since they have all indicated - - at least, the three older have indicated - - they want to live with the aunt and uncle. [¶] As for [El.C.], she's always lived with her siblings, and it would also be in her best interest to go with her siblings to the aunt and uncle's home."

The juvenile court noted that the section 388 petition as to I.C. was more problematic. The changed circumstance was also the Nevada placement approval. However, the juvenile court stated, "The best interest argument turns on whether it is in [I.C.'s] best interest to stay with her siblings." The juvenile court observed that I.C. had been placed when she was several days old. The juvenile court found, "Clearly, there is a bond between [I.C.] and [F.H. and J.H.], and [F.H. and J.H.] have taken good care of

[I.C.].” The juvenile court noted a difference of opinion regarding I.C.’s bond with her siblings: J.H., the prospective adoptive mother, testified there is no bond. M.L., the paternal aunt, testified there is a deep relationship between all the siblings; Dr. Kaser-Boyd’s evaluation noted the siblings reject I.C.; and the children’s therapist observed the youngsters played together and helped one another, including I.C. The juvenile court observed: “What’s troubling to this court is that while [F.H. and J.H.] state that they want to adopt the children in their care, they do not have much positive things to say about the children except for [I.C.]. Their main concern seems to be to protect [I.C.] from the other children, which raises the concern they may be keeping [I.C.] away from the other siblings. [¶] It is questionable whether [F.H. and J.H.] would continue with the sibling contact if they adopt [I.C.], given their concerns about the other siblings harming [I.C.].” Ultimately, the juvenile court granted the section 388 petition as to I.C. finding: “By preponderance of the evidence, the court finds that there is sufficient evidence to find that there is a sibling relationship among the children and that it would be in I.C.’s best interest to join her siblings in being placed with her paternal aunt and uncle, and that petition is granted.”

III. COURT ORDERED EVALUATIONS

A. Dr. Timothy Collister

In June 2006, the juvenile court ordered an Evidence Code section 730 evaluation be conducted. Dr. Timothy Collister reviewed the records related to the parents and the four oldest children. Medical records related to the mother revealed a diagnosis of recurrent major depressive disorder and bipolar disorder. The mother readily admitted to performing prostitution from age 16 to present and to physically abusing both J.C. and Es.C. Testing revealed that the mother’s understanding and empathy for others and awareness of how she hurts and alienates them was seriously distorted. The father admitted having striking the mother. This occurred after the mother hit Es.C. in the face.

The father, who has epilepsy, became aware of the mother's prostitution early in their relationship. Further, the father dropped out of school in the fourth grade while in Mexico and demonstrated significant anger regarding the mother's betrayal and actions.

J.C. lived with his aunt from age one through five when he was returned to his parents. He reported that after being removed from his parents' home in August 2005, he was in a foster placement with his four younger siblings. J.C. admitted having been removed because he behaved badly. Following another foster placement failure, J.C. was placed in Eggleston Youth Center. J.C. reported being struck once or twice weekly by the father. J.C. was aware of his mother's prostitution. J.C. was found to have a depressive disorder with prior suicidal ideation. J.C. also suffered from a defiant disorder.

A.N. reported that Es.C. had difficulty understanding and comprehending. He had progressed from completing one out of multiple-step commands to two-step commands. Es.C.'s intelligence testing demonstrated verbal comprehension was at the lower end of the normative level, causing concern about neuropsychological deficits. Dr. Collister concluded: "[The Rorschach test] perhaps is most indicative of defense mechanisms being near their limit, nearly being overwhelmed, in their ability to contain underlying emotional pressures and turmoil, with it very easy now for psychiatric symptoms or decompensation to occur as further stress is imposed." The Rorschach results also suggested "significant underlying emotional pressure which may tend to vent in an unmodulated" fashion. Further, Dr. Collister stated the Rorschach results indicated the emotional pressure would lead to defiant conduct.

A.N. reported that Ad.C. was suspected of having autism. Ad.C. attended special education classes. Ad.C. communicated more with signs than words. Ad.C. became very angry with Al.C. and hit her hard. Ad.C. tried to drown Al.C. Ad.C. exploded when things did not go his way. Ad.C. had tantrums approximately three times each day. Ad.C. and Es.C. had frequently been hit by J.C. Dr. Collister found Ad.C. to have "regressed behavior and anxiety" and "low frustration" tolerance. Dr. Collister noted:

“The Rorschach as well as the other projectives were highly noteworthy for a level of aggressive ideation which is rarely seen in these evaluations, even with children who have been exposed to substantial violence. Violent responses on the Rorschach were noted throughout, then with the regression noted in the manner in which he responded, which appeared to relate to emotional neediness.”

A.N. reported that Al.C. also had difficulties with limited comprehension. Al.C. reported that she was physically abused by her brother, Es.C. Al.C. also indicated that Ad.C. had sexually abused her. Al.C.’s overall level of cognitive function was at the lower end of the borderline range, “There was borderline function for abstract reasoning, as well as for general comprehension, as well as appreciation of societal norms and social judgment.” Al.C. was found to have an adjustment disorder.

Dr. Collister also observed the parents’ interaction with Es.C., Ad.C., and Al.C. in a playroom during a second interview. Dr. Collister concluded: “It stands out that both the mother and father show limited cognitive function. The mother’s cognitive function has probably been limited across her life. In addition, there is major depression which apparently emerged at least by age 15, with suicidal ideation. In addition, her life history as well as test results suggest the probability of a mixed personality disorder, marked by borderline features as well as possible schizoid traits. The father . . . quite possibly had more significant cognitive function previously . . . However, those results in the average range are clearly discrepant from the results on measures which may relate more to current function. . . . It is reported that he experiences a neurological process which is reminiscent of cysticercosis, which appears to involve tumorous masses in the brain, and may relate to seizures.”

J.C. was described as having a mild depressive disorder along with reactive oppositional defiant disorder. With regard to Es.C., Dr. Collister noted: “The results of projective testing suggest significant ego fragility, viewing the world about him as aggressive, rendering him overwhelmed. There is also gross identity disturbance for his age.” Dr. Collister continued regarding Ad.C.: “Perhaps the most complicated situation

psychiatrically relates to [Ad.C.]. His projective protocol was highly disturbed, with a quite unusually high level of aggressivity seen across all projective tests in most all items. His defense mechanisms appear to be overwhelmed. The most optimistic formulation is that this would be reactive to what has occurred in the home with substantial chaos, domestic violence by the father against the mother, physical abuse against the older brothers, and physical abuse by [J.C.] and [Es.C.] against him. . . . All told, the protocol with projective testing and his behavioral status, as well as his regressed manner of interacting during the evaluation raises the possibility of a more significant psychiatric disorder such as a bipolar disorder.” Regarding Al.C., Dr. Collister stated: “[She] shows the least reaction to what has occurred. However, this may simply relate to her utilizing defense mechanisms including repression and denial successfully, pushing off and refusing to interact with material which provokes and elicits underlying emotional turmoil.”

Dr. Collister recommended that: Es.C., Ad.C., Al.C. remain in foster care and that J.C. remain in the Eggleston Youth Center; J.C. and Es.C. receive therapy with possible medication; Ad.C. receive at least weekly therapy; Al.C. receive biweekly therapy; and monitored visitation with parents be continued. Dr. Collister believed the prognosis for successful reunification was low even if the parents complete the court ordered therapy.

B. Dr. Kaser-Boyd

Dr. Kaser-Boyd conducted the court-ordered psychological evaluations of the five children and F.H. and J.H. regarding placement and subsequent adoption. Dr. Kaser-Boyd saw the five youngest children and F.H. and J.H. in an office setting, observed their interactions, and interviewed them individually. Dr. Kaser-Boyd submitted a report dated June 3, 2006.

Es.C. has a history of learning disabilities. Es.C. indicated he preferred to live with M.L. and A.L. in Las Vegas. Es.C. reported that he and his siblings recently had a

two-day visit with them in Las Vegas. Es.C. indicated, J.C. and the parents were also present at that time. Es.C. liked F.H. This was because F.H. bought toys for them, took them to the park, and performed magic tricks. When asked why the older children did not play with I.C., Es.C. said, “‘It’s because she doesn’t want to.’”

Ad.C. was very guarded during his interview. Ad.C. also voiced a preference for living with M.L. and A.L. But Ad.C. did not know A.L.’s name. Ad.C. became more defensive as the interview progressed, often giving no responses. Ad.C. was asked why the other children did not play with I.C. Ad.C. said Al.C. did not want to play with I.C. This was because I.C. would hit Al.C. No interaction between Ad.C. and I.C. was observed during the four hours at Dr. Kaser-Boyd’s office.

Al.C. was more verbal than her older brothers. However, like them, Al.C. realized that she was speaking to a psychologist. Al.C. wanted to live with the paternal aunt, M.L. in Las Vegas. Al.C. was asked about I.C.: “I asked [Al.C.] about her sister [I.C.]. She said, ‘Only kind of good.’ I asked what she meant by ‘only’ and she said[:] ‘She keeps on bothering me. She destroys my stuff. She hits me for no reason, when I did nothing to her.’ Her tone her is very negative and not at all forgiving that her sister is basically a baby.” Dr. Kaser-Boyd explained that Al.C.’s tone of voice displayed “dislike” of I.C. During the play session, Al.C. directed two behaviors at I.C. Al.C. would sometimes ignore I.C. Or Al.C. would angrily stare at I.C. Al.C. was asked if her parents were in Las Vegas during the visit with M.L. and A.L. Al.C. looked anxious and denied they were present. When asked how life was with the F.H. and J.H., Al.C. said, “They care about me but I don’t like them.”

El.C. and I.C. were evaluated through observation rather than pursuant to interviews based on their ages. El.C. played with her older siblings. Also, El.C. went to F.H. and J.H. in another room 25 feet away for attention. El.C. essentially ignored I.C. El.C. played on a parallel fashion with I.C. rather than interactively. However, Dr. Kaser-Boyd believed a relationship could eventually develop between the two girls based on their ages and El.C.’s temperament. I.C. was clear in her pattern of attachment. I.C.

started out with the other siblings in the playroom. The older siblings completely ignored I.C. and dominated playing with the toys. When this occurred, I.C. returned frequently to F.H. and J.H. in the adjoining room. Al.C. was observed to hoard toys, taking them out of reach from I.C. Al.C. handed them to her brothers. The effect of this activity was to keep the toys away from I.C. At times, when I.C. went back to the playroom, she called to F.H.: “Dad! Dad! Play toys!” Thereafter, I.C. would go back to F.H. and J.H. for attention.

Dr. Kaser-Boyd observed no playful interaction between the older siblings and I.C. They did not talk to I.C., ask her what she was doing or where she had been. I.C. spent approximately 25 minutes of the 1 hour of observation returning to F.H. and J.H. Over the 4 hours of interviews and observation, I.C. spent 85 percent of her time with F.H. and J.H. I.C. did not seek any of her siblings for comfort. At one point, J.H. stood up to go to an individual interview. I.C. ran after J.H. yelling, “Mommy!” I.C. was allowed in the interview room and spent the time in J.H.’s lap. Eventually, I.C. left to see “Daddy” but returned within minutes yelling, “Mommy!” I.C. went back and forth between F.H. and J.H. and displayed significant attachment to them. The older children were positive toward F.H. and J.H. Es.C. called F.H., “Dad.” Al.C. searched out F.H. and J.H. on several occasions, usually to enforce rules to protect her toys.

F.H. reported that I.C. was placed with him and his wife several days after birth. When they learned she was available for adoption, they immediately said yes. F.H. and J.H. were familiar with I.C.’s older siblings because they had several four-hour visits with the youngsters and the parents. When F.H. and J.H. learned that the adoptive plan for the other siblings did not materialize, they agreed to have all of the children (except J.C.) placed with them so that I.C. could unify with them. When asked how the children interacted with one another, F.H. said that because E.C., Ad.C., and Al.C. had been sexually molested by J.C., they openly touched themselves and each other. This required close supervision by F.H. and J.H. F.H. indicated that they had caught Al.C., Es.C., and Ad.C. abusing El.C. F.H. further reported that Al.C. hit El.C. and Ad.C. F.H. noted that

Es.C. would bully and intimidate the younger children. F.H. worked with El.C. to teach the youngster that the children are all equal. F.H. stated Es.C. quickly angers and punches the wall. Al.C. also has a very short temper. However, F.H. tried to be impartial and teach them to be fair. F.H. stated that Es.C. had stolen things from the home.

Ad.C. had a habit of inappropriately touching his sisters. After their recent visit to Las Vegas, Ad.C. got close to Al.C., who pulled down her top. Ad.C. was licking Al.C.'s nipples. After being separated and watched closely, F.H. saw Al.C. again pull down her t-shirt while Ad.C. kissed her nipples. As noted, this occurred after the five youngsters had returned from the Las Vegas visit. El.C. also told F.H. that her brother was bothering her. Al.C. had previously told F.H. and J.H. that J.C. used to "pee" in her mouth. F.H. and J.H. were told that J.C. had sexually molested his four younger siblings. F.H. expressed concerns about I.C. After the trip to Las Vegas, I.C. pulled her pants down and went over to Ad.C. El.C. reported that Ad.C. touched I.C. in the bathroom in Las Vegas. Al.C. was also caught manipulating El.C.'s private parts.

Despite all these problems, F.H. believed that significant progress had been made in the previous six months and that he was committed to raising all the children if the juvenile court gives him the opportunity to adopt them. F.H. said, "After all, they are just children and they can improve." F.H. reported that I.C. has epilepsy as does the mother. F.H. worried that she might not be developing appropriately. Dr. Kaser-Boyd noted that F.H. appeared to be very sincere in his efforts to help these children. She observed that I.C. and El.C. are attached to F.H. F.H. also made a financial commitment to add rooms on to his house for each child if the juvenile court allowed him to adopt them.

J.H. was observed to be very loving and maternal toward I.C. She was also seen to be very kind with all of the children. Dr. Kaser-Boyd's report states: "[J.H.] was observed to be very loving to [I.C.] Like her husband she appears to be a very warm person with good values. She was observed to be very kind with all the children. She got a little tearful as described how the older children exclude [I.C.] and take toys away

from her. She said for example, ‘If all the children are playing at a table and [I.C.] comes to approach them to play, they will take all their toys and move to another table.’” J.H. reported that I.C. was very distraught after the Las Vegas visit. I.C. had cried, “Mom! Dad!” all night and said, “[Es.C.]! No!” I.C. followed J.H. around for three days after returning. J.H. stated that with more time, patience, and love she hoped the children would improve. J.H. wanted all of the children to be together. J.H. feared that the children did not love I.C. During the interview, J.H. stated, “Es.C. is very attached to me. He comes and gives me a kiss or a hug and when I leave to [go to] the store he wants to know where I am going.” However, Al.C. is more to herself, often did sexually related acts, and lied for no apparent reason. Dr. Kaser-Boyd found J.H. to be credible, kind, and nurturing. J.H. was committed to I.C. and wanted to extend the family to the other siblings (except J.C.).

Dr. Kaser-Boyd concluded that I.C. was “very significantly attached” to F.H. and J.H. While I.C. seems interested in her siblings, they did not include her in play nor interact in any way over a long period of observation. I.C. was very affectionate and engaged with both F.H. and J.H. Dr. Kaser-Boyd concluded: “It is my opinion that the attachment is equivalent to that of a natural parent and child. When there is this level of attachment, there is a clear detriment to disrupting the attachment equivalent to taking a child from their real parents. There is typically a period of grieving, as if the parent has died. In addition to the grief response, which can include disruptions in sleep and appetite, there can be angry acting out, which alienates new caretakers and puts the child at risk for rejection or abuse. Some children develop a formal attachment disorder, and have serious difficulty forming a trusting bond with a new caretaker.”

Dr. Kaser-Boyd further believed that the four older siblings were overtly rejecting I.C. Dr. Kaser-Boyd noted: “While there is no doubt there is an abstract benefit of a relationship with siblings, if the younger children are the target of the older children’s aggression, there is a clear detriment to the younger child[children]. I observed that [Al.C.] is quite angry at [I.C.] and I could not rule out the possibility that [Al.C.] would

be mean or abusive to [I.C.] when adults are not looking. There is also the spectre of sexual abuse of the girl siblings” Dr. Kaser-Boyd continued: “I was given a history of substantial sexual acting out by [Es.C., Ad.C., and Al.C.], and this presents a clear risk to the minor I.C. It is my opinion that the other girls are also at risk and that [Al.C.] is both a victim and a ‘perpetrator’.” Dr. Kaser-Boyd concluded: “For the above reasons, it is my opinion that it is in [I.C.’s] best interest to be adopted by [F.H. and J.H.] Sibling visits could be of potential benefit, but only if these are tightly supervised and the issues surrounding angry and sexual acting out are resolved. If sibling visits are ordered, I would suggest that [F.H. and J.H.] be the [persons] supervising as they have much clarity about the effect of sexual abuse and reasonable interventions for sexual-acting out children.”

IV. SECTION 388 HEARING TESTIMONY

A. Veronica Gonzalez

Veronica Gonzalez, a marriage and family therapist intern, was the treating therapist for Es.C., Ad.C., and Al.C. from September 2007 to the June 2008 hearing. Ms. Gonzalez testified at the section 388 hearing on June 24, 2008. Ms. Gonzalez met weekly with Es.C., Ad.C., and Al.C. at their home for 45 to 60 minutes each. F.H., J.H., El.C., and I.C. are present in the home during the therapy. Ms. Gonzalez observed El.C. and I.C. as they passed by the living room during a discussion with the older children. Ms. Gonzalez reported that all three of the older siblings had been diagnosed as having post-traumatic stress disorder. They had also been found to have been exposed to violence in the home. The treatment goals for Al.C. were to reduce: symptoms of depression; sexual acting out; and both daytime and nighttime urinary accidents. The goals for Ad.C. included: reducing anxiety and confusion; decreasing avoidance; and increasing pro-social behaviors. Ms. Gonzalez reported that while Ad.C. had begun to

open up more in therapy, he also appeared to express more anger. Ms. Gonzalez indicated that recently Ad.C. expressed a desire to live with M.L. and A.L. Within the previous three months, F.H. and J.H. had told Ms. Gonzalez that Al.C. had tried to lure the younger girls into her bed. Ms. Gonzalez incorporated discussions of inappropriate sexual behavior in Al.C.'s therapy sessions. Ms. Gonzalez also met with all three children regarding inappropriate touching. Ms. Gonzalez believed if family and individual therapy were provided, the five children could function well despite the sexual behavior. However, Ms. Gonzalez believed J.C. should be separated from the younger children. In the previous week, Ms. Gonzalez had asked Al.C. to write down what events occurred in Las Vegas, specifically regarding whether there had been any touching and who was present. When Ms. Gonzalez arrived at the residence of F.H. and J.H., Ad.C. and Al.C. were writing letters on the same subject. F.H. had asked Ad.C. and Al.C. to write letters on the touching issues. Al.C. admitted touching either El.C. or I.C. while at the home of M.L. Al.C. believed J.C., Es.C., and their male cousin had played together "doing something" but did not further explain what had occurred in writing. When asked if she had previously said that J.C. was not present in Las Vegas, Al.C. said that F.H. told her to write that down. Al.C. seemed uncomfortable about talking further about the subject, so Ms. Gonzalez did not pursue it. Ms. Gonzalez never resolved whether J.C. was present when the children visited Las Vegas.

Ms. Gonzalez met with the five children, M.L. and A.L., and their two children on June 23, 2008, for over two hours. The children had begun to share about their visit with M.L. and her husband, A.L. The children spoke mostly about the pool and having done "fun things" and appeared very happy. However, after a short time, they moved to the lobby area of Ms. Gonzalez' office due to the warmth in the room where the interview was transpiring. The children then began playing on the floor. I.C. sat on the lap of M.L. I.C. was smiling and referred to M.L. as "Mom" on various occasions. After the group moved to the lobby, I.C. was with the children part of the time and then on the lap of M.L. Al.C. was trying to help El.C. color with crayons. Ms. Gonzalez believed that

Al.C. gave I.C. a piece of paper for coloring. Ms. Gonzalez did not believe I.C. was too interested. Al.C. appeared happy. Ms. Gonzalez noted: “[Al.C.] was not fighting with the girls. What I’ve observed, sometimes she’s kind of pulling things away from them, and she didn’t do that at all this time. The fact that I actually seen her ask [El.C.] to come over - - you know, she called her over to give her the crayons. I was very surprised. I didn’t think she would be that cooperative with her and just volunteer for help” Es.C. and Ad.C. also seemed happy.

Ms. Gonzalez spoke to M.L. and A.L. about the need for continued therapy to address Es.C.’s and Ad.C.’s anger. M.L. and A.L. were responsive to family therapy if recommended. Al.C. liked the fact that M.L. had been playing in the pool with them rather than just watching over. M.L. and A.L. shared that they had grown up in large families and were willing to take on what they knew was a difficult challenge. Ms. Gonzalez stated that Ad.C. would require special classes in a new school and that the children might need to be evaluated regarding understanding and processing information. In addition, Ms. Gonzalez believed the three older children should continue with individual counseling. Al.C. had recently opened up about how J.C. had sexually abused her. Ms. Gonzalez believed that therapy regarding that subject should be continued. Es.C. and Ad.C. needed help managing anger.

Ms. Gonzalez indicated that she had no expertise in evaluating sibling bonds. Ms. Gonzalez acknowledged that I.C. played with the other children only briefly then was often with M.L. Ms. Gonzalez saw I.C. cry when J.H. left to go somewhere. I.C. was “looked over” during some of the interview by M.L.’s daughter, who seemed to get along well with El.C. and I.C. Ms. Gonzalez acknowledged that F.H. and J.H. had been very receptive to trying different ways of addressing the children’s problems. F.H. and J.H. were very cooperative with Ms. Gonzalez. F.H. and J.H. were very interested in getting extra help for the children and learning how to work with them. However, Ms. Gonzalez did not believe that placement with M.L. and A.L. would be detrimental for the

children's behavioral and emotional progress based upon how happy the children appeared when they were interviewed with the paternal relatives the previous day.

B. M.L.

M.L. lived with the mother and father in Las Vegas until J.C. was one year old. M.L.'s sister had custody of J.C. for four years in New Mexico after he was removed from the parents' custody. The parents moved to New Mexico during that time. The parents regained custody of J.C. and moved to Los Angeles after Ad.C. was born. M.L. came to Los Angeles regularly to visit with the mother and father and their children. M.L. learned that J.C., Es.C., Ad.C., Al.C., and El.C. were placed in foster care about a month after they had been removed the parents' custody. M.L. had weekly contact with the children by phone who were placed at that time with A.N. M.L. visited the children twice while they were living with A.N. M.L. learned that the children, other than I.C., had been removed from A.N.'s care. Upon learning Es.C., Ad.C., and El.C. were removed from A.N.'s custody, M.L. attended the next juvenile court hearing. M.L. indicated an interest in having the children placed in her home at that time. M.L. continued to attend the juvenile court hearings thereafter.

M.L. participated in the interstate assessment. M.L. attended the required parenting classes on orientation, kinship, teamwork, and discipline. M.L. believed that she was prepared to have the children in her home. M.L. and her husband had the five children at her home, where they talked to them and played with them. M.L. observed the children to be happy and never fighting. When asked what kind of services M.L. thought the children would need if placed in her home, she responded: "I think they will keep having therapy probably for a while because, like, I saw different. Probably they will be normal and feel like a family development maybe, but they need therapy." M.L. said she was willing to participate in the therapy as well. M.L. said she was told that the children had sexually acting-out behaviors. M.L. said: "That's what they said, but I

talked to the kids the other day. And we stayed in the bedroom on the floor, and we start talking about it. And they didn't - - [¶] [El.C.], who is three year old, I ask her when it happened, because in my house we were everything with them. We put them in the room until they were sleeping. And I said, 'That's impossible,' because we always were together, playing, having fun. [¶] So I never see any - - something different, something weird. Never touching or nothing. So [El.C.] said, 'Well, he touched me in my private - - [Ad.C.].'" M.L. said she would talk to the children and supervise them if she learned of inappropriate sexual behavior.

The five children had visited with M.L. in Las Vegas on two occasions for three-day weekends. In addition, M.L. had approximately five monitored and five unmonitored visits with all five of the children. M.L. was asked about the special needs of Es.C, Ad.C., and Al.C. When asked if she was aware of their special needs, M.L. responded: "Not exactly. They told me they need, like therapy, a lot of patience, a lot of love. That's what they need." Arrangements had not yet been made to enroll Es.C., Ad.C., and Al.C. in special education classes in Nevada. M.L. testified that the interaction with I.C. during the last weekend visit was really good. M.L. said I.C. never cried and was always happy. M.L. gave I.C. a cup rather than a bottle. M.L. said that I.C. and El.C. were like twins, doing everything together. M.L. also reported that Al.C. was very good with El.C. and I.C. during the visit. The three girls never fought. M.L. reported that Es.C. was protective of I.C. and Ad.C. hugged I.C. M.L. believed that the older children had a really deep relationship with I.C. M.L. thought I.C. should be placed with her because Es.C., Ad.C., Al.C. and El.C. were attached to her. M.L. acknowledged that I.C. cried briefly during the initial part of the first visit in Las Vegas. M.L. did not witness any emotional reaction on I.C.'s part when she returned to F.H.

C. J.H.

J.H. had been a foster parent for five years. During that time, she had approximately 20 to 25 children placed with her. None of the previous children had been available for adoption. J.H. first learned that I.C. was available for adoption when the youngster was three months old. J.H. wanted to adopt all five of the youngest children, Es.C., Ad.C., Al.C., El.C., and I.C. When asked if she thought it was in all of the children's best interest to be adopted together, J.H. responded, "It depends, because the children are not very attached to I.C." J.H. explained that when the children played and I.C. got close to them, they moved to a different table with the toys. J.H. did not have any good examples of I.C. having a good relationship with her siblings. J.H. did not see any disadvantage that I.C. might have by being permanently separated from her siblings. Es.C., Ad.C., Al.C., and El.C. had been placed in J.H.'s home in February 2007. During the time the younger children had been with her, J.H. ensured that they attended school, medical, and dental appointments, and were well groomed and fed. J.H. considered all five of the younger youngsters to be her children and wished to adopt them.

V. REMOVAL OF ES.C. FROM PLACEMENT WITH F.H. AND J.H. AND OTHER POST-MODIFICATION EVENTS

We have taken judicial notice of post-judgment evidence filed by the department on September 11, 2008. We consider this evidence for a specific limited purpose. We do not consider the post-modification order evidence in any fashion in terms of the merits of the appeal. Whether to affirm or reverse will rise or fall based on the evidence before the juvenile court at the time the section 388 motions were granted-not post-modification order events. (*In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; see *In re Josiah Z.* (2005) 36 Cal.4th 664, 676.) Rather, we are affirming the modification order as it relates to Es.C., Ad.C., Al.C., and El.C. But it would be inappropriate under these facts to simply affirm

and direct the juvenile court to send Es.C., Ad.C., Al.C., and El.C. to Nevada without consideration of the following post-modification evidence and events particularly where the approval under the Interstate Compact on the Placement of Children has expired. Thus, we consider the following evidence for the limited purpose of what order as to Es.C., Ad.C., Al.C., and El.C. is to be made once the remittitur is filed. (Code Civ. Proc., § 906; see *Torres v. Automobile Club of So. California* (1997) 15 Cal.4th 771, 776.)

The evidence indicates Es.C. was removed from the home of F.H. and J.H. on September 2, 2008, following a report to the department hotline on August 28, 2008. It was reported Es.C. had attempted to touch the private parts of an unrelated foster child in the home of F.H. and J.H. F.H. and J.H. indicated they did not want Es.C. to be removed and were willing to continue working with the child. However, the department believed it was in the best interest of the other children that Es.C. be removed from the home of F.H. and J.H. Es.C. was placed in another foster home on September 2, 2008. However, he was subsequently moved to another foster home on September 4, 2008, because the first foster parent had a 10-year-old female child. On September 9, 2008, the juvenile court ordered that Es.C.'s attorney contact us for clarification of our stay order. The juvenile court desired to know whether Es.C. could be placed with M.L. and A.L.

Several other post-modification events warrant comment. After the notice of appeal was filed, we issued a number of stay orders. Because we were staying the juvenile court's order, we also issued a preference order. Further, after the notice of appeal was filed, separate counsel were appointed in the juvenile court to represent various children. The California Appellate Project assigned counsel to represent the children on appeal. All counsel have promptly filed their briefs in compliance with the preference order. After oral argument, we modified our prior stay orders. We reiterated that I.C. could not be removed from the home of F.H. and J.H. But in our post-oral argument order, we allowed the juvenile court to proceed to send Es.C., Ad.C., Al.C., and El.C. to the home of M.L. and A.L.

VI. DISCUSSION

A. Abuse of Discretion

1. Preferential consideration pursuant to section 361.3

Preliminarily, the department's argument that the juvenile court abused its discretion by giving the relatives preferential placement consideration pursuant to section 361.3² is without merit. Although we agree that section 361.3 does not apply after reunification services have been terminated, the juvenile court did not base its decision on the preferential consideration in this case. (See *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854-855 [placement for adoption did not constitute a new placement within the meaning of the relative placement preference]; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1031-1032 [“When reunification fails, section 366.26, subdivision (k), assures a “relative caretaker” who has cared for the child that, when parental rights are terminated and the child is freed for adoption, his or her application will be considered before those submitted by other relatives and strangers.” [Citation.]”]) Here, as will be set forth below, the juvenile court ruled upon the section 388 change in circumstances petitions filed by Ms. Eskin, the children's attorney. In reaching its conclusion that the five children be placed with M.L. and A.L., the juvenile court relied upon: the reports of Dr. Kaser-Boyd; the testimony of treating therapist, Ms. Gonzalez; testimony concerning M.L. and A.L.; and written closing arguments by counsel. There is

² Section 361.3, subdivision (a) states, “In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.”

no indication in the record that the juvenile court based its decision on preferential relative consideration.

2. Application of section 366.26, subdivisions (k) and (n)

The department argues: “Section 361.3 is intended to control when a child needs a temporary home and one of the section’s major purposes is to facilitate reunification with the parents. [Citations.] In contrast, the purpose of section 366.26, subdivision (k) is to assist in the determination of an adoptive home for a child. [Citations.] Section 366.26, subdivision (k), assures a relative caretaker or foster parent who has cared for a child that his or her application for adoption will be considered before those submitted by other relatives and strangers.” However, as set forth above, the juvenile court did not rely upon section 361.3 in ordering the placement of the five children with M.L. and A.L. Rather, the juvenile court made its ruling on the evidence propounded in connection with the two section 388 petitions filed by Ms. Eskin. Moreover, no section 366.26 hearing has been conducted regarding any of the five children. The juvenile court has not approved a permanent plan for adoption or freed the children for adoption. As a result, neither section 366.26, subdivision (k) nor subdivision (n) is applicable.

3. Juvenile Court’s grant of the section 388 petitions

a. overview

The department contends the order granting the two 388 petitions was an abuse of discretion. Section 388 states: “(a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child himself or herself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any

order of court. . . . [¶] . . . [¶] (c) If it appears that the best interests of the child may be promoted by the proposed change of order, recognition of a sibling relationship, or termination of jurisdiction, the court shall order that a hearing be held” The person filing the modification petition has the burden of showing changed circumstances would promote the best interests of the child by a preponderance of the evidence. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685; *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

The request for change must be viewed in the context of the dependency proceedings as a whole. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307; *In re Heather P.* (1989) 209 Cal.App.3d 886, 891.) As our Supreme Court explained in *Marilyn H.*: “The requirement of petitioning the court for a hearing pursuant to section 388 to show changed circumstances must be viewed in the context of the dependency proceedings as a whole. (*Cynthia D. v. Superior Court* [(1993) 5 Cal.4th 242,] 253.) Dependency proceedings are proceedings of an ongoing nature. While different hearings within the dependency process have different standards and purposes, they are part of an overall process and ongoing case. One section of the dependency law may not be considered in a vacuum. It must be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal .3d 1379, 1386-1387.)” (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307.) After reunification services have been terminated, the juvenile court’s focus has shifted to the needs of the child for permanency and stability. (*In re Amber M.*, *supra*, 103 Cal.App.4th at p. 685; *In re Zacharia D.* (1993) 6 Cal.4th 435, 447; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) When the section 388 modification petition is filed after reunification services have been terminated and the section 366.26 selection and implementation hearing has been set, the focus of the proceedings has shifted from the parent’s interest in the care, custody, and companionship of the child to the youngster’s best interests. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re Janee J.*

(1999) 74 Cal.App.4th 198, 211; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526, & fn. 5.)

Whether the order should be modified rests within the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416; *In re Stephanie M., supra*, 7 Cal.4th at p. 318.) As the Supreme Court has held, “[A] reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.] And we have recently warned: ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M., supra*, 7 Cal.4th at p. 318; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.)

Here, the section 388 petitions were made on behalf of all five children by their attorney, Ms. Eskin. The June 11, 2008 petition requested the November 5, 2007 suitable placement order placing Es.C, Ad.C., Al.C., and El.C. with F.H. and J.H. be modified because the interstate assessment concerning placing the youngsters with M.L. and A.L. was approved by the State of Nevada. Ms. Eskin requested that the children be placed with M.L. and A.L. in Las Vegas “with the goal of stabilizing placement and initiating appropriate therapeutic services” prior to the selection of a permanent plan. Ms. Eskin further stated: “The children [Es.C., Ad.C., and Al.C.] have repeatedly stated to minor’s counsel, the department and minor’s therapist their preference to reside with their paternal aunt and uncle. El.C. has always resided with [Es.C., Ad.C. and Al.C.], and it is in her best interest to reside with her siblings. This placement will promote the safe and appropriate contact between minors, J.C. and parents.” The section 388 petition filed on June 25, 2008, as to I.C. also cited the Nevada approval for placement with the M.L. and A.L. as the changed circumstances. Ms. Eskin requested that I.C. be placed with M.L. and A.L. in Nevada noting: “Child would maintain beneficial sibling relationship and

significant family ties with birth family. Child would be harmed by separation from siblings. Child will be raised in a loving home and her emotional and physical needs will be met by her paternal aunt and uncle.”

b. section 388 petition as to I.C.

The department and I.C. argue that the juvenile court’s modification order as to her exceeded the allowable scope of judicial discretion. As noted, I.C., along with all her siblings, were represented in the juvenile court by one attorney, Ms. Eskin. After the notice of appeal was filed as we issued our writ of supersedeas, separate counsel were appointed in the juvenile court for various children. Counsel appointed for I.C. requested that an appellate attorney be appointed to represent the child. The California Appellate Project assigned Jennifer Mack, Esquire to represent I.C. After consultation with the youngster’s trial counsel, Ms. Mack has joined in the department’s argument that the modification order should be reversed as to I.C.

We conclude the order directing that I.C. be removed from the custody of F.H. and J.H. was a decision beyond the allowable scope of the juvenile court’s judicial discretion. I.C. was placed with the F.H. and J.H. several days after birth. Both the evaluation of Dr. Kaser-Boyd and the testimony of Ms. Gonzalez, therapist for Es.C., Ad.C., and Al.C., demonstrated the existence of a strong bond between I.C. and F.H. and J.H. I.C. has bonded with the F.H. and J.H. since birth, thinks of them as her natural parents, and was observed to cling to them during the evaluation by Dr. Kaser-Boyd. All involved, including the juvenile court, agreed that I.C. had been well cared for by F.H. and J.H. Dr. Kaser-Boyd believed that I.C.’s attachment to F.H. and J.H. was “equivalent” to that of a natural parent and child. Moreover, Dr. Kaser-Boyd stated: “When there is this level of attachment, there is a clear detriment to disrupting the attachment equivalent to taking a child from their real parents. There is typically a period of grieving, as if the parent has died. In addition to the grief response, which can include disruptions in sleep and

appetite, there can be angry acting out, which alienates new caretakers and puts the child at risk for rejection or abuse. Some children develop a formal attachment disorder, and have serious difficulty forming a trusting bond with a new caretaker.” Dr. Kaser-Boyd believed the older siblings overtly rejected I.C. and although there would be an abstract benefit for her to have a relationship with siblings, there was also a clear detriment if she was the target of the older children’s aggression. In addition, Dr. Kaser-Boyd could not rule out the possibility that Al.C. would be mean or abusive to I.C. Based upon the history of substantial sexual acting out amongst the four older siblings, the potential for sexual abuse of I.C. presented a clear risk. Dr. Kaser-Boyd concluded it would be in I.C.’s best interest to be adopted by the de facto parents. Dr. Kaser-Boyd noted that tightly supervised sibling visits could be of potential benefit if the “issues surrounding angry and sexual acting out” are resolved.

Ms. Gonzalez’s reports and testimony do not constitute substantial evidence that it would be in the best interest of I.C. to be removed from the custody of F.H. and J.H. Ms. Gonzalez, a marriage and family counseling intern, provided therapy to Es.C., Ad.C., and Al.C. In her February 8, 2008, report, Ms. Gonzalez cautioned against changing the placement of the children: “They appear to be very stable in their current foster home, and any change in placement may affect their current progress both behaviorally and emotionally. It appears that it would be in the children’s best interest to resolve the matter of permanent placement as soon as possible. . . .” Ms. Gonzalez’s June 23, 2008 report: discussed recent sexual acting out that arose after the visit to the home of M.L. and A.L. in Las Vegas ; related that the family who receives custody of must undergo family therapy; stated that Al.C. and Ad.C. denied there was any inappropriate touching while in Las Vegas; all of the five younger children played together; and M.L. and A.L. were very receptive and looked forward to caring for all of the children. At the hearing on the modification petition, Ms. Gonzalez was asked about her statement in her February 8, 2008 report concerning the problems with a change in placement. Ms. Gonzalez stated that she had changed her opinion. Ms. Gonzalez testified she changed

her views for the following reasons: “Because in having the children share more about what they want and seeing that there’s been a little bit of a stir in their – a little bit of change in their behavior since discussing more of wanting to go with their aunt. And I don’t know – I would not say that would be detrimental.” (It bears emphasis, the changed views involved the three children Ms. Gonzalez counseled.) Further, Ms. Gonzalez testified that at the one meeting she had with all of the five youngest children and M.L. and A.L., I.C. sat on the lap of the paternal aunt. I.C. referred to M.L. as “mom” on several occasions. Ms. Gonzalez had also observed that a sibling relationship existed amongst the youngsters. The foregoing facts in this paragraph constitute the entirety of the evidence that support the conclusion it is in the best interest of I.C. to accompany the other four children to Las Vegas.

Ms. Gonzalez’s opinions do not constitute substantial evidence that it would be in the best interests of I.C. to be removed from the home of F.H. and J.H. Ms. Gonzalez provided therapy to three of the children; Es.C., Ad.C., and Al.C. Ms. Gonzalez was not the therapist for I.C.; who in fact did not undergo any therapy. Prior to the June 23, 2008 meeting with M.L. and A.L., Ms. Gonzalez had only seen I.C. at the home of F.H. and J.H. while counseling Es.C., Ad.C., and Al.C. Ms. Gonzalez described her limited contact with the other two younger children: “It’s usually just them walking by, because I provide the sessions in the [de facto parents’] living room; so I can see the girls passing by from the front door to the kitchen, and I can see them sometimes in the kitchen area or going up the stairs.” The only meeting of consequence Ms. Gonzalez ever had with I.C. was on June 23, 2008. Ms. Gonzalez never formed an opinion about the nature of the bond between F.H. and J.H. and I.C.

The social workers who observed the de facto parents noted the strong parental bond I.C. had with F.H. and J.H. which existed over the more than two-year period they had been together since her birth. Dr. Kaser-Boyd concluded: I.C. was at risk given the sexually acting out of all of the other siblings; I.C. was very affectionate and engaged with both F.H. and J.H.; the attachment between F.H. and J.H. and I.C. “is equivalent to

that of a natural parent and child”; I.C. would undergo a “clear detriment” if the equivalent of a parent-child attachment were disrupted; the trauma that would be experienced by I.C. would be the equivalent of the death of a parent. This evidence was uncontradicted. Given the two-year equivalent of a parent-child relationship between F.H. and J.H. and I.C., it would not be in her best interests to have this type of trauma inflicted upon her,.

The section 388 order under review was made more than two years after the juvenile court attained jurisdiction over I.C. The juvenile court had scheduled a section 366.36 hearing and continued it repeatedly. Thus, as noted, the focus of the dependency proceedings was on the need for permanency and stability. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) At this stage of the proceedings, I.C. has a *compelling* right to permanency and stability. (*Id.* at p. 306 [“they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.”]; *In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1504 [“If anything, children’s familial rights are more compelling than adults’, because children’s interests in family relationships comprise more than the emotional and social interests which adults have in family life; children’s interests also include the elementary and wholly practical needs of the small and helpless to be protected from harm and to have stable and permanent homes in which each child’s mind and character can grow, unhampered by uncertainty and fear of what the next day or week or court appearance may bring.”]; *In re Shirley K.* (2006) 140 Cal.App.4th 65, 72 [“Shirley had been in Grandparents’ care for 20 months, effectively her entire life. She had a compelling interest in remaining with the only family she had ever known and with whom she had a reciprocal bonded relationship of unconditional love and affection.”].) The right to stability and permanency at this stage of the proceedings has been described by one Court of Appeal as the overwhelming consideration in resolving custody issues. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1507.)

When custody has continued over a significant time, as here, the entire life of I.C., then the need for stability may be controlling. In the case of *In re Stephanie M.*, *supra*, 7 Cal.4th at page 317, our Supreme Court stated: “In any custody determination, a primary consideration in determining the child’s best interests is the goal of assuring stability and continuity. (*Burchard v. Garay* (1986) 42 Cal.3d 531, 538, and fn. 6.) ‘When custody continues over a significant period, the child’s need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child.’ (*Ibid.*, fn. omitted; see also *In re Marriage of McGinnis* (1992) 7 Cal.App.4th 473, 478.)” We conclude: the over two-year relationship between F.H. and J.H. and I.C. was that of an actual parent and child; the uncontradicted evidence demonstrated the disruption of that bond would effect I.C. as if both parents had died; and given the stage of the dependency proceedings, her need for stability and permanence legally prevented the juvenile court on these specific and unusual facts from removing I.C. from the custody of F.H. and J.H.

There is no merit to the sibling relationship contentions of the parents and El.C., Es.C., Ad.C., and Al.C. It is uncontradicted that living with her siblings has exposed I.C. to sexual misconduct. And the benefits that redound to the benefit of I.C. when her sibling relationships are maintained pale in the face of the uncontradicted evidence of detriment when she is removed from the home of F.H. and J.H. Further, when the modification order was issued, the juvenile court possessed the discretion to retain the siblings in the home of F.H. and J.H.

c. section 388 petition as to Es.C., Ad.C., Al.C. and El.C.

Although we may have ruled differently and the issue is very close in terms of appellate review, the juvenile court acted within its discretion in granting the section 388 petition filed by Ms. Eskin on behalf of Es.C., Ad.C., Al.C. and El.C. M.L. and A.L.

have expressed a willingness to deal with the youngsters' special needs and the Nevada authorities have certified the proposed placement is consistent the best interest of the children. And Ms. Gonzalez has indicated the children will benefit from a relationship with M.L. and A.L. The juvenile court possessed the discretion to act as it did in connection with Es.C., Ad.C., Al.C. and El.C. All we are holding is that when the modification order was entered, the juvenile court could not remove I.C. from the home of her de facto parents. Upon remittitur issuance, the juvenile court is to determine where Es.C., Ad.C., Al.C., and El.C. are to live in light of our holding that I.C. would not be removed from the home of F.H. and J.H. This determination must be made in the context of a section 366, subdivision (a) review hearing. Such a hearing will involve the evidence presented at the initial modification petition hearing plus newly discovered evidence. (See *In re Vincent M.* (2008) 161 Cal.App.4th 943, 960; *In re Arturo A.* (1992) 8 Cal.App.4th 229, 244.)

VII. DISPOSITION

The order granting the section 388 petition and modifying placement as to I.C. is reversed. The order granting the modification petition as to Es.C., Ad.C., Al.C., and El.C. is affirmed. Upon remittitur issuance, the juvenile court is to make those orders as are appropriate as to Es.C., Ad.C., Al.C., and El.C. (§ 366, subd. (a).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.